



1-2020

A Jewish Perspective on Tom Shaffer: Zecher Tzadik Livracha (May the Memory of the Righteous be a Blessing)

Russell G. Pearce

Fordham University School of Law, rpearce@law.fordham.edu

Follow this and additional works at: <https://commons.stmarytx.edu/lmej>



Part of the [Legal Biography Commons](#), [Legal Education Commons](#), [Legal Ethics and Professional Responsibility Commons](#), [Legal History Commons](#), [Legal Profession Commons](#), and the [Legal Writing and Research Commons](#)

Recommended Citation

Russell G. Pearce, *A Jewish Perspective on Tom Shaffer: Zecher Tzadik Livracha (May the Memory of the Righteous be a Blessing)*, 10 ST. MARY'S JOURNAL ON LEGAL MALPRACTICE & ETHICS liv (2020).

Available at: <https://commons.stmarytx.edu/lmej/vol10/iss1/4>

This Article is brought to you for free and open access by the St. Mary's Law Journals at Digital Commons at St. Mary's University. It has been accepted for inclusion in St. Mary's Journal on Legal Malpractice & Ethics by an authorized editor of Digital Commons at St. Mary's University. For more information, please contact jilloyd@stmarytx.edu.

TRIBUTE

*Russell G. Pearce**

A Jewish Perspective on Tom Shaffer:
Zecher Tzadik Livracha
(May the Memory of the Righteous be a Blessing)

In Jewish tradition, the honorific *Zecher Tzadik Livracha*—May the Memory of the Righteous be a Blessing—is reserved for great religious teachers who have embodied holiness in their lives.¹ I greatly appreciate this invitation to write a memorial for Tom Shaffer, a devout Catholic. Tom had a tremendous influence on me. He provided an alternative model for being a law professor, opened my eyes to the importance of integrating Judaism into my work, and taught me the importance of redressing the corrosive influence of radical individualism on legal culture.

Throughout his tenure as a law professor and Dean, Tom challenged the legal academy to place the formation of the student as a whole person and the pursuit of the public good at the center of legal education. When I began teaching law in 1990, I often sought Tom's guidance. Tom was already one of the giants in the field of professional responsibility and twenty-five years past his Deanship at the University of Notre Dame Law School. He was a kind and generous mentor, who often provided feedback on my scholarship, and graciously agreed to participate in multi-faith conferences I organized. Throughout my career, I have tried to pass on this kindness to colleagues.

* Professor of Law, Edward & Marilyn Bellet Chair in Legal Ethics, Morality & Religion, Fordham University School of Law. Special thanks to Michele Hirshman, Amy Uelmen and Ian Weinstein for their helpful comments on earlier drafts, and to Chai Williams and Sijin Choi for their excellent research and advice.

1. PROVERBS 10:7.

As a role model, Tom's influence extended far beyond his kindness. When I learned early in my career that this eminent former Dean chose to teach a clinic, his choice intrigued me. Through his clinical teaching, Tom rejected the stratification between classroom and clinical teachers that is far too powerful in modern legal education. By becoming a clinical teacher, he demonstrated his commitment to the centrality of clinical education to the mission of teaching our students to become outstanding lawyers in the service of others. Tom became a model for me in this respect, and inspired me to devote a significant part of my career to teaching in the clinic as well as in the classroom.

Equally important Tom's work and personal example has shaped my scholarship more than any other single thinker. My very first article analyzed one of Tom's favorite legal thinkers, George Sharswood,² one of the nineteenth century parents of the American field of legal ethics.³ Tom emphasized how Sharswood's approach to legal ethics found "moral authority in the profession itself." My approach was complementary, highlighting how Sharswood's conception of legal ethics found its source in a political theory that deemed lawyers the primary guardians of democracy, civil rights, and rule of law, and derived their ethical obligations from that role.⁴ Tom's supportive response to my article began a correspondence I found invaluable.

When I moved from the origins of the legal ethics codes to professionalism, I once again found Tom's scholarship of great value. Many commentators on professionalism assumed the business-profession dichotomy—that business people were selfish profit-maximizers while lawyers worked primarily for the public good. These commentators bemoaned lawyers' embracing business practices in their organization or their marketing and in Tom's view did a disservice to the values of professionalism. Tom rejected any simplistic distinction between business and law practice. He described the hypocrisy of "the view that lawyers who are 'paid well. . . from the profits of commercialism. . . act in a spirit of

2. See, e.g., THOMAS L. SHAFFER, AMERICAN LEGAL ETHICS: TEXT, READINGS, AND DISCUSSION TOPICS xxxvi, 355–58, 367–68 (1985).

3. Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Codes*, 6 GEO. J. LEGAL ETHICS 241 (1992).

4. *Id.* at 247, 250–72.

public service, but that “[t]hose who practice commercialism do not.”⁵ Instead, Tom argued that “all persons have an obligation to ‘serve the common good’ and that this obligation applied equally to business and law practice.”⁶ Tom nonetheless recognized professionalism as an important resource for the community of lawyers in promoting integrity and commitment to the public good. I have always found Tom’s critique of the business-profession dichotomy persuasive and more recently have come to embrace his analysis of the strength of professionalism in offering lawyers a fruitful way to engage in dialogue on how they can best fulfill their moral and communal obligations.⁷

Even beyond his influence on my thinking regarding professionalism and the history of legal ethics, Tom’s vision guided two of my major scholarly projects. Tom was the father of the modern religious lawyering movement.⁸ In books and articles beginning in late 1970s, he “made the shocking proposal that for Christians, their faith community should be a primary point of reference for decisions about their professional life.”⁹ What made Tom’s contentions shocking were the way in which they contravened the dominant neutral partisan conception of the lawyer’s role—a conception that lawyers ought not have moral accountability in their legal work¹⁰—and that they must, in Sanford Levinson’s terms, “bleach out” . . . merely contingent aspects of the self, including the residue of particularistic socialization that we refer to as our ‘conscience.’”¹¹ In contrast, Tom’s work offered a powerful argument that Christian attorneys should integrate

5. Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229, 1260 (1996) (citing Thomas L. Shaffer, *Lawyer Professionalism as a Moral Argument*, 26 GONZ. L. REV. 393, 403 (1991)).

6. Shaffer, *supra* note 5, at 403–04.

7. Eli Wald & Russell G. Pearce, *Being Good Lawyers: A Relational Approach to Law Practice*, 29 GEO. J. LEGAL ETHICS 601 (2016).

8. Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075, 1076 (1998).

9. Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in Liberal Democracy: A Challenge and an Imitation*, 55 CASE W. RES. L. REV. 127, 129 (2004).

10. See DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* xx (1988) (extreme partisanship and moral non-accountability are basic principles of lawyer ideology); Murray L. Schwartz, *The Professionalism and Accountability of Lawyers*, 66 CAL. L. REV. 669, 671 (1978) (same).

11. Russell G. Pearce, *The Jewish Lawyer’s Question*, 27 TEX. TECH L. REV. 1259, 1261 (1996) (quoting Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577, 1578 (1993)).

their faith into their work and that this perspective was consistent with the foundational aspirations of professionalism.¹²

In 1991, when I began to teach Professional Responsibility, I encountered Tom's work on religious lawyering.¹³ Prior to that time, I only had a general sense of the connection between my Judaism and my work as a lawyer.¹⁴ I would have associated Judaism with my obligation to provide assistance to the poor, to promote human rights, and to act with integrity and respect for others, but had no idea that it could apply more systematically and pervasively.¹⁵ Tom's scholarship persuaded:

me to think more deeply about being a Jewish lawyer and I began to look for Jewish analogues. The only articles I found were either directed exclusively toward Orthodox Jewish audiences (and I am Reform and not Orthodox), or else were concerned only with a very limited ethical question. None offered a comprehensive way to think about being a Jewish lawyer analogous to [Tom's] contributions [and those of other Christian scholars who built on Tom's work, such as Joe Allegritti]."¹⁶

With this inspiration, I began a journey that led me to write a series of articles on what it meant to be a Jewish lawyer¹⁷ and likewise, encouraged others to do the same.¹⁸ Across the spectrum of perspectives on Judaism, from right to left, is a commitment to God in all areas of our lives, including

12. THOMAS SHAFFER, ON BEING A CHRISTIAN AND A LAWYER (1981).

13. Russell G. Pearce, *Foreword, Symposium, The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075, 1078 (1998).

14. Pearce & Uelmen, *supra* note 9, at 128–29.

15. *Id.*

16. Pearce & Uelmen, *supra* note 9, at 130.

17. See e.g., Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 CARDOZO L. REV. 1613 (1993); Russell G. Pearce, *The Jewish Lawyer's Question*, 27 TEX. TECH L. REV. 1259 (1996); Russell G. Pearce, *To Save a Life: Why a Rabbi and a Jewish Lawyer Must Disclose a Client Confidence*, 29 LOYOLA L.A. L. REV. 1771 (1996); Russell Pearce, *Learning from the Unpleasant Truths of Interfaith Conversations: William Stringfellow's Lessons for the Jewish Lawyer*, 38 CATH. LAW. 255, 260 (1998); Russell G. Pearce, *Reflections on the Jewish Lawyer*, 17 J. L. & RELIGION 179 (2002) (review essay); Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering in Liberal Democracy: A Challenge and an Invitation*, 55 CASE W. RES. L. REV. 127, 129 (2004); Russell G. Pearce & Amelia J. Uelmen, *Religious Lawyering's Second Wave*, 21 J.L. & RELIG. 269 (2005); Russell G. Pearce & Emily Jenab, *Reflections on Identity, God and Lawyers* (May 3, 2018); Russell G. Pearce, Adam Winer & Emily Jenab, *A Challenge to Bleached Out Professional Identity: How Jewish was Justice Louis D. Brandeis?*, 33 Touro L. REV. 335 (2017).

18. See e.g., Sam Levine, *The Broad Life of a Jewish Lawyer: Integrating Spirituality, Scholarship and Profession*, 27 TEX. TECH L. REV. 1199 (1996); Michael Brody, *Practicing Criminal Law: A Jewish Law Analysis of Being a Prosecutor or Defense Attorney*, 66 FORDHAM L. REV. 1141 (1998).

our work.¹⁹ In the words of Rabbi Joseph Soloveitchik, our Jewish commitment “penetrates into every nook and cranny of life. The marketplace, the street, the factory, the house, the meeting place, the banquet hall, all constitute the backdrop for the religious life.”²⁰ As with Shaffer’s approach to Christianity, Judaism offers a perspective on lawyering “radically different in premise from” the requirement of “bleaching out” moral and religious identity.²¹ Even Justice Louis Brandeis, a secular Jewish lawyer whom Tom greatly admired,²² rejected the neutral role in recognizing Judaism as the source of his professional values and his commitment to democracy and social justice.²³ For a practicing lawyer who is religiously Jewish, whether Orthodox, Conservative, Reform or Reconstructionist, the work of a lawyer—like all work—offers in addition the potential for transcendence. By directing herself to God, a Jewish lawyer can, in the words of Rabbi Abraham Joshua Heschel, bring “together the scattered forces of the self; the participation of heart and soul, not only of will and mind.”²⁴

At the same time, as Brandeis explained,²⁵ Judaism provides a religious foundation for furthering professionalism’s aspirations of equal justice under the law and social justice.²⁶ But there is no “simple equation of Jewish and professional values. . . . Jewish values . . . may overlap with professional values, but will not necessarily do so.”²⁷ For a religiously Jewish lawyer, therefore, her religion is only the beginning of the inquiry. Indeed, the Jewish response to a question of professional ethics is often “not self-evident.”²⁸ And the process of arriving at that answer while living

19. Pearce, *supra* note 11, at 1266–67.

20. Pearce, *supra* note 11, at 1267.

21. Pearce, *supra* note 11, at 1261, 1266–67 (discussing bleaching out).

22. See THOMAS L. SHAFER, AMERICAN LEGAL ETHICS: TEXT, READINGS, AND DISCUSSION TOPICS 253 (1985); see also John S. Dzienkowski, *The Contributions of Louis Brandeis to the Law of Lawyering*, 33 TOURO L. REV. 177, 190–91 (2016) (explaining Tom’s attraction to Brandeis’s legal work).

23. Russell G. Pearce, Adam Winer & Emily Jenab, *A Challenge to Bleached Out Professional Identity: How Jewish was Justice Louis D. Brandeis?*, 33 TOURO L. REV. 335 (2017).

24. Pearce, *supra* note 11, at 1267; Russell Pearce, *Learning from the Unpleasant Truths of Interfaith Conversations: William Stringfellow’s Lessons for the Jewish Lawyer*, 38 CATH. LAW. 255, 260 (1998) (espousing Rabbi Heschel’s view of the need to bring God into the practice of law).

25. Russell G. Pearce, Adam Winer & Emily Jenab, *A Challenge to Bleached Out Professional Identity: How Jewish was Justice Louis D. Brandeis?*, 33 TOURO L. REV. 335 (2017).

26. Pearce, *supra* note 11, at 1268–70.

27. Pearce, *supra* note 11, at 1269.

28. Pearce, *supra* note 11, at 1268.

together with a diverse group of friends, neighbors, and colleagues requires, as Martin Buber explains, “[I]rue community with God and true community with human beings, both in one.”²⁹

Through his Christianity, Tom embodied Buber’s seeker of true community with God and human beings.³⁰ His example made me, as a member of a minority religion (albeit one well accepted in the legal world), feel comfortable in my efforts to engage in multifaith dialogue on religious lawyering through scholarship, conferences,³¹ and personal friendships, culminating in the creation of the Fordham Law School Institute on Religion, Law & Lawyer’s Work. To this day, the Institute continues the work that Tom inspired.³²

Tom also taught me to recognize the harmful impact of individualism on lawyers and on American culture generally. In his searingly brilliant article, *The Legal Ethics of Radical Individualism*,³³ Tom asserted that legal ethics relied mistakenly on philosophical assumptions “first, that fact and value are separate; and second, that the moral agent acts alone; . . . The influence of this philosophical position deprives legal ethics of truthfulness and of depth.”³⁴ In trust and estate representation, Tom argued, conflicts of interests doctrine presented the family falsely as a collection of radical individuals, rather than as an organic unit.³⁵ Tom’s insights led me to write about *Family Values and Legal Ethics: Competing Approaches to Conflicts and Representing Spouse*.³⁶ In that article, I argued for a revision of the legal ethics rules that would “allow[] family members to determine how they will be represented. It [would] provide[] them with the option of choosing

29. Pearce, *supra* note 11, at 1270 (quoting MARTIN BUBER, ON JUDAISM 19, 111 (Nahum N. Glatzer ed., 1967)).

30. Tom lived his life this way. He also wrote often of the importance of community. *See, e.g.*, THOMAS L. SHAFFER WITH MARY M. SHAFFER, AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION (1991).

31. Pearce & Uelmen, *supra* note 9, at 131.

32. To view the work of the Fordham Law Institute on Religion, Law & Lawyer’s Work, visit https://www.fordham.edu/info/20694/institute_on_religion_law_and_lawyers_work. Additionally, I extend my deepest appreciation to Amy Uelmen, our founding Director, who is now a lecturer at Georgetown Law School.

33. Thomas Shaffer, *The Legal Ethics of Radical Individualism*, 65 TEX. L. REV. 963, 982, 987 (1987).

34. *Id.* at 964.

35. *Id.* at 982, 987.

36. Russell G. Pearce, *Family Values and Legal Ethics: Competing Approaches to Conflicts in Representing Spouses*, 62 FORDHAM L. REV. 1253 (1994).

representation as a collection of individuals under established conflicts rules or as a family group.”³⁷

Eventually, Tom’s teaching regarding both the falsity and the powerful influence of narrow individualism also led me to explore lawyers’ work more generally. Following Tom’s lead, Eli Wald and I have written a series of articles³⁸ focusing on how the dominant conception of the lawyer’s role as a hired gun or neutral partisan relies on the assumption that lawyers and their clients function as atomistic individuals who, like the Holmesian bad man, seek to maximize their narrow self-interest. Eli and I critique this perspective both descriptively and normatively. We argued that lawyers and their clients, like all people, have both individual and relational interests, and that they exist—and live and work and love—through webs of relationships. For lawyers and their clients, these relationships could range from family and friends to colleagues, adversaries, employees, courts, customers, and shareholders. Accordingly, Eli and I argue that lawyers should pursue what we term relational self-interest for themselves and their clients.³⁹ Relational self-interest recognizes that determining the long-term self-interest for individuals and organizations requires incorporating consideration of how actions will impact the good of friends, neighbors, colleagues, adversaries, and community. Eli and I have applied these insights to articles on professionalism, legal education, and civility. I have also applied the insights of relational interest to economic theory as they intersect with the brilliant contributions of leading economists, such as Amartya Sen, Luigino Bruni, and Stefano Zamagani.⁴⁰

In all these ways, I owe Tom Shaffer a great debt. As a role model, both as a scholar and a teacher, he helped me understand the profound

37. *Id.* at 1294.

38. Russell G. Pearce & Eli Wald, *Being Good Lawyers: A Relational Approach to Law Practice*, 29 GEO. J. LEGAL ETHICS 601 (2016); Russell G. Pearce & Eli Wald, *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 FORDHAM L. REV. 2407 (2015); Russell G. Pearce & Eli Wald, *Rethinking Lawyer Regulation: How a Relational Approach Would Improve Professional Rules and Roles*, 2012 MICH. ST. L. REV. 513 (2015); Russell G. Pearce & Eli Wald, *What’s Love Got to Do with Lawyers? Thoughts on Relationality, Love, and Lawyers’ Work*, 17 LEGAL ETHICS (2014); Russell G. Pearce & Eli Wald, *The Relational Infrastructure of Law Firm Culture and Regulation: The Exaggerated Death of Big Law*, 42 HOFSTRA L. REV. 109 (2013); Russell G. Pearce & Eli Wald, *Making Good Lawyers*, 9 U. ST. THOMAS L. J. 403 (2011); Russell G. Pearce & Eli Wald, *The Obligation of Lawyers to Heal Civic Culture: Confronting the Ordeal of Incivility in the Practice of Law*, 34 ARK. L. REV. 1 (2011).

39. See Pearce & Wald, *Making Good Lawyers*, *supra* note 38.

40. Russell G. Pearce & Brendan M. Wilson, *Chapter Four: Business Ethics*, in HANDBOOK ON THE ECONOMICS OF RECIPROCITY AND SOCIAL ENTERPRISE (Luigino Bruni and Stefano Zamagni eds. Edward Elgar Publishing 2013).

intersection between my work as a law professor and lawyer with my Judaism and my humanity. In this way, he taught me how to be a better Jew and a better person. And so, to Tom, a devout Christian, I offer the remembrance—*Zecher Tzadik Livracha*—May the Memory of the Righteous be a Blessing.⁴¹

41. *See supra* note 1.